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ELPIDA MEMORY, INC. and
8 ELPIDA MEMORY (USA) INC.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 In re DYNAMIC RANDOM ACCESS
MEMORY (DRAM) ANTITRUST
14 LITIGATION

Master File No. M-02-1486 PJH
MDL No. 1486

15 This Document Relates To:

Case No. C-06-06436 PJH (N.D. Ca.)
06-CV-5309 (S.D.N.Y.)

16 STATE OF NEW YORK

17 Plaintiff,

18 v.

19 MICRON TECHNOLOGY, INC., *et al.*,

20 Defendants.
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**ELPIDA MEMORY, INC.'S AND
ELPIDA MEMORY (USA) INC.'S
AMENDED ANSWER TO AMENDED
COMPLAINT**

DEMAND FOR JURY TRIAL

1 Defendants Elpida Memory, Inc. (“Elpida Japan”) and Elpida Memory (USA) Inc.
2 (“Elpida USA”) hereby answer Plaintiff’s Amended Complaint (the “Complaint”) as follows.
3 Elpida Japan and Elpida USA deny each and every allegation in the Complaint’s section headings
4 and in all portions of the Complaint not contained in numbered paragraphs. To the extent the
5 Complaint’s allegations concern persons or entities other than Elpida Japan and/or Elpida USA,
6 Elpida Japan and Elpida USA deny that such allegations support any claim for relief against
7 Elpida Japan and/or Elpida USA.

8 **INTRODUCTORY ALLEGATIONS**

9 1. Elpida Japan and Elpida USA admit that dynamic random access memory
10 (“DRAM”) is a type of memory chip that stores data and is used in various electronic products.
11 Except as so stated, Elpida Japan and Elpida USA deny the allegations in Paragraph 1 of the
12 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
13 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
14 allegations in Paragraph 1 of the Complaint, and on that basis deny them.

15 2. Elpida Japan and Elpida USA admit on information and belief that the
16 United States Department of Justice (“DOJ”) announced in June 2002 that it had initiated an
17 investigation of certain DRAM suppliers. Except as so stated, Elpida Japan and Elpida USA deny
18 the allegations in Paragraph 2 of the Complaint to the extent they relate to Elpida Japan and/or
19 Elpida USA. Elpida Japan and Elpida USA lack knowledge or information sufficient to form a
20 belief as to the truth of the remaining allegations in Paragraph 2 of the Complaint, and on that
21 basis deny them.

22 3. Elpida Japan and Elpida USA deny the allegations in Paragraph 3 of the
23 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
24 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
25 allegations in Paragraph 3 of the Complaint, and on that basis deny them.

26 4. On information and belief, Elpida Japan and Elpida USA admit that the
27 DOJ announced in June 2002 that it had initiated an investigation of certain DRAM suppliers and
28 that Micron agreed to cooperate. Elpida Japan and Elpida USA admit that Elpida Japan entered

1 into a plea agreement with the DOJ and paid a fine in connection with its plea. Elpida Japan and
2 Elpida USA refer Plaintiff to that plea agreement, which was filed in federal court in the Northern
3 District of California (Case No. CR 06-0059 (PJH)) in March 2006, for its full and complete
4 contents. Elpida Japan and Elpida USA also admit that a former employee of Elpida USA entered
5 into a plea agreement with the DOJ and served a related prison term in the United States. Elpida
6 Japan and Elpida USA refer Plaintiff to that plea agreement, which was filed in federal court in the
7 Northern District of California (Case No. CR 06-00752 (PJH)) in December 2006, for its full and
8 complete contents. Elpida Japan and Elpida USA also admit on information and belief that three
9 other companies – Samsung, Hynix, and Infineon – and certain other individuals have been
10 charged with, and have entered into plea agreements with the DOJ, and that certain individuals
11 have served prison terms in the United States. Elpida Japan and Elpida USA refer Plaintiff to
12 those plea agreements for their full and complete contents. Elpida Japan and Elpida USA admit
13 that Plaintiff purports to quote a portion of a press release. Elpida Japan and Elpida USA refer
14 Plaintiff to that press release for its full and complete contents. Except as so stated, Elpida Japan
15 and Elpida USA deny the allegations in Paragraph 4 of the Complaint to the extent they relate to
16 Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack knowledge or information
17 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 4 of the
18 Complaint, and on that basis deny them.

19 5. Elpida Japan and Elpida USA admit that Plaintiff purports to bring this
20 action to recover monetary and equitable relief, but deny that Plaintiff or any person or entity
21 Plaintiff purports to represent has adequately pled claims, that Plaintiff has suffered any injury,
22 and that Plaintiff is entitled to any relief by means of the Complaint. Except as so stated, Elpida
23 Japan and Elpida USA deny the allegations in Paragraph 5 of the Complaint to the extent they
24 relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack knowledge or
25 information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 5 of
26 the Complaint, and on that basis deny them.

Allegations Concerning Jurisdiction and Venue

6. Elpida Japan and Elpida USA admit that Plaintiff purports to bring this action under the statutory provisions referenced in Paragraph 6 of the Complaint, but deny that Plaintiff has adequately pled claims under those provisions, that Plaintiff or any person or entity Plaintiff purports to represent has suffered any injury, and that Plaintiff is entitled to any relief by means of the Complaint. Except as so stated, Elpida Japan and Elpida USA lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Complaint, and on that basis deny them.

7. The allegations in Paragraph 7 of the Complaint constitute legal contentions and/or conclusions to which no response is required. To the extent a response is required, Elpida Japan and Elpida USA lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of the Complaint, and on that basis deny them.

8. The allegations in Paragraph 8 of the Complaint constitute legal contentions and/or conclusions to which no response is required. To the extent a response is required, Elpida Japan and Elpida USA lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of the Complaint, and on that basis deny them.

9. The allegations in Paragraph 9 of the Complaint constitute legal contentions and/or conclusions to which no response is required. To the extent a response is required, Elpida Japan and Elpida USA admit that Elpida USA transacts business in the Northern District of California. Except as so stated, Elpida Japan and Elpida USA deny the allegations in Paragraph 9 of the Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 9 of the Complaint, and on that basis deny them.

Allegations Concerning the Parties

Allegations Concerning Plaintiff

10. Elpida Japan and Elpida USA admit that Plaintiff purports to bring this action under the statutory provisions and in the representational capacities referenced in Paragraph 10 of the Complaint, but deny that Plaintiff has adequately pled claims under those provisions or

1 in such capacities, that Plaintiff or any person or entity Plaintiff purports to represent has suffered
 2 any injury, and that Plaintiff is entitled to any relief by means of the Complaint. Except as so
 3 stated, Elpida Japan and Elpida USA lack knowledge or information sufficient to form a belief as
 4 to the truth of the remaining allegations in Paragraph 10 of the Complaint, and on that basis deny
 5 them.

6 **Allegations Concerning Defendants**

7 11. Elpida Japan and Elpida USA admit on information and belief that Micron
 8 Technology, Inc. maintains offices in Boise, Idaho. Elpida Japan and Elpida USA lack knowledge
 9 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 11 of the
 10 Complaint, and on that basis deny them.

11 12. Elpida Japan and Elpida USA admit on information and belief that Micron
 12 Semiconductor Products, Inc. maintains offices in Boise, Idaho. Elpida Japan and Elpida USA
 13 lack knowledge sufficient to form a belief as to the truth of the remaining allegations in Paragraph
 14 12 of the Complaint, and on that basis deny them.

15 13. Elpida Japan and Elpida USA admit on information and belief that Infineon
 16 Technologies AG maintains offices in Germany. Elpida Japan and Elpida USA lack knowledge
 17 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 13 of the
 18 Complaint, and on that basis deny them.

19 14. Elpida Japan and Elpida USA admit on information and belief that Infineon
 20 Technologies North American Corp. maintains offices in San Jose, California. Elpida Japan and
 21 Elpida USA lack knowledge sufficient to form a belief as to the truth of the remaining allegations
 22 in Paragraph 14 of the Complaint, and on that basis deny them.

23 15. Elpida Japan and Elpida USA admit on information and belief that Hynix
 24 Semiconductor, Inc. maintains offices in Korea. Elpida Japan and Elpida USA lack knowledge
 25 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 15 of the
 26 Complaint, and on that basis deny them.

27 16. Elpida Japan and Elpida USA admit on information and belief that Hynix
 28 Semiconductor America, Inc. maintains offices in San Jose, California. Elpida Japan and Elpida

1 USA lack knowledge sufficient to form a belief as to the truth of the remaining allegations in
2 Paragraph 16 of the Complaint, and on that basis deny them.

3 17. Elpida Japan and Elpida USA admit on information and belief that Samsung
4 Electronics Co. Ltd. maintains offices in Korea. Elpida Japan and Elpida USA lack knowledge
5 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 17 of the
6 Complaint, and on that basis deny them.

7 18. Elpida Japan and Elpida USA admit on information and belief that Samsung
8 Semiconductor, Inc. maintains offices in San Jose, California. Elpida Japan and Elpida USA lack
9 knowledge sufficient to form a belief as to the truth of the remaining allegations in Paragraph 18
10 of the Complaint, and on that basis deny them.

11 19. Elpida Japan and Elpida USA admit on information and belief that Mosel-
12 Vitelic, Inc. maintains offices in Taiwan. Elpida Japan and Elpida USA lack knowledge sufficient
13 to form a belief as to the truth of the remaining allegations in Paragraph 19 of the Complaint, and
14 on that basis deny them.

15 20. Elpida Japan and Elpida USA admit on information and belief that Mosel-
16 Vitelic Corporation maintains offices in San Jose, California. Elpida Japan and Elpida USA lack
17 knowledge sufficient to form a belief as to the truth of the remaining allegations in Paragraph 20
18 of the Complaint, and on that basis deny them.

19 21. Elpida Japan and Elpida USA admit on information and belief that Nanya
20 Technology Corporation maintains offices in Taiwan. Elpida Japan and Elpida USA lack
21 knowledge sufficient to form a belief as to the truth of the remaining allegations in Paragraph 21
22 of the Complaint, and on that basis deny them.

23 22. Elpida Japan and Elpida USA admit on information and belief that Nanya
24 Technology Corporation USA, Inc. maintains offices in San Jose, California. Elpida Japan and
25 Elpida USA lack knowledge sufficient to form a belief as to the truth of the remaining allegations
26 in Paragraph 22 of the Complaint, and on that basis deny them.

27 23. Elpida Japan and Elpida USA admit that Elpida Japan is a Japanese
28 corporation and that it maintains executive offices at Sumitomo Seimei Yaesu Bldg., 3F, 2-1

1 Yaseu 2-chome, Chuo-ku, Tokyo, Japan. Elpida Japan and Elpida USA admit that Elpida Japan
2 commenced DRAM manufacturing in January 2003, but deny that Elpida Japan manufactured
3 DRAM before that date or in the United States at any time. Elpida Japan and Elpida USA deny
4 that Elpida Japan sold or distributed DRAM in the United States except through its subsidiary
5 Elpida USA. Elpida Japan and Elpida USA deny that Elpida Japan sold or distributed DRAM
6 outside of the United States before February 2001 and inside the United States before March 2001.
7 Except as so stated, Elpida Japan and Elpida USA deny the allegations contained in Paragraph 23
8 of the Complaint.

9 24. Elpida Japan and Elpida USA admit that Elpida USA is currently a wholly
10 owned subsidiary of Elpida Japan. Elpida Japan and Elpida USA further admit that Elpida USA
11 has sold and distributed DRAM to customers in the United States since March 2001. Except as so
12 stated, Elpida Japan and Elpida USA deny the allegations contained in Paragraph 24 of the
13 Complaint.

14 25. Elpida Japan and Elpida USA admit on information and belief that NEC
15 Electronics America, Inc. maintains offices in Santa Clara, California. Elpida Japan and Elpida
16 USA lack knowledge sufficient to form a belief as to the truth of the remaining allegations in
17 Paragraph 25 of the Complaint, and on that basis deny them.

18 **Allegations Concerning Purported Conspiracy and Alleged Co-Conspirators**

19 26. Elpida Japan and Elpida USA deny the allegations in Paragraph 26 of the
20 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
21 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
22 allegations in Paragraph 26 of the Complaint, and on that basis deny them.

23 27. Elpida Japan and Elpida USA deny the allegations in Paragraph 27 of the
24 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
25 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
26 allegations in Paragraph 27 of the Complaint, and on that basis deny them.

27 28. Elpida Japan and Elpida USA deny the allegations in Paragraph 28 of the
28 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida

1 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
2 allegations in Paragraph 28 of the Complaint, and on that basis deny them.

3 **ALLEGATIONS CONCERNING INTERSTATE COMMERCE**

4 29. Elpida Japan and Elpida USA admit that Elpida Japan commenced DRAM
5 manufacturing in January 2003, but deny that Elpida Japan manufactured DRAM before that date
6 or in the United States at any time. Elpida Japan and Elpida USA deny that Elpida Japan sold or
7 distributed DRAM in the United States except through its subsidiary Elpida USA. Elpida Japan
8 and Elpida USA deny that Elpida Japan sold or distributed DRAM outside of the United States
9 before February 2001 and inside the United States before March 2001. Elpida Japan and Elpida
10 USA admit that Elpida USA has sold or distributed DRAM to customers in the United States since
11 March 2001. Except as so stated, Elpida Japan and Elpida USA deny the allegations in Paragraph
12 29 of the complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and
13 Elpida USA lack knowledge sufficient to form a belief as to the truth of the remaining allegations
14 in Paragraph 29 of the Complaint, and on that basis deny them.

15 **ALLEGATIONS CONCERNING DRAM: THE PURPORTEDLY PRICE FIXED**

16 **PRODUCT**

17 **Allegations Concerning the Product and Its Purported Functions**

18 30. Elpida Japan and Elpida USA admit that DRAM is a type of memory chip
19 that stores data and is used in various electronic products. Elpida Japan and Elpida USA also
20 admit that Plaintiff purports to define certain terms for purposes of its Complaint, but deny that
21 these statements fully describe DRAM and/or the terms. Except as so stated, Elpida Japan and
22 Elpida USA lack knowledge or information sufficient to form a belief as to the truth of the
23 remaining allegations in Paragraph 30 of the Complaint, and on that basis deny them.

24 31. Elpida Japan and Elpida USA admit that Plaintiff purports to define the
25 term "Random Access Memory" for purposes of its Complaint, but deny that these statements
26 fully describe DRAM and/or the term. Except as so stated, Elpida Japan and Elpida USA lack
27 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
28 Paragraph 31 of the Complaint, and on that basis deny them.

1 32. Elpida Japan and Elpida USA admit that Synchronous DRAM and Double
2 Data Rate DRAM are types of DRAM. Elpida Japan and Elpida USA further admit that Plaintiff
3 purports to define certain terms for purposes of its Complaint, but deny that these statements fully
4 describe DRAM and/or the terms. Except as so stated, Elpida Japan and Elpida USA lack
5 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
6 Paragraph 32 of the Complaint, and on that basis deny them.

7 33. Elpida Japan and Elpida USA admit that a “bit” is a unit of measurement
8 for DRAM, and that a “byte” consists of eight bits. Elpida Japan and Elpida USA also admit that
9 Plaintiff purports to define certain terms for purposes of its Complaint, but deny that these
10 statements fully describe DRAM and/or the terms. Except as so stated, Elpida Japan and Elpida
11 USA lack knowledge or information sufficient to form a belief as to the truth of the allegations in
12 Paragraph 33 of the Complaint, and on that basis deny them.

13 34. Elpida Japan and Elpida USA lack knowledge or information sufficient to
14 form a belief as to the truth of the allegations in Paragraph 34 of the Complaint, and on that basis
15 deny them.

16 35. Elpida Japan and Elpida USA deny the allegations in Paragraph 35 of the
17 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
18 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
19 allegations in Paragraph 35 of the Complaint, and on that basis deny them.

20 36. Elpida Japan and Elpida USA admit that factories in which DRAM is
21 manufactured are often referred to a fabrication plants or “fabs.” Except as so stated, Elpida Japan
22 and Elpida USA deny the allegations in Paragraph 36 of the Complaint to the extent they relate to
23 Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack knowledge or information
24 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 36 of the
25 Complaint, and on that basis deny them.

26 37. Elpida Japan and Elpida USA deny the allegations in Paragraph 37 of the
27 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
28

1 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
2 allegations in Paragraph 37 of the Complaint, and on that basis deny them.

3 **Allegations Concerning DRAM Purchasers: Computer OEMs**

4 38. Elpida Japan and Elpida USA admit that DRAM can be used in certain
5 personal computers. Elpida Japan and Elpida USA also admit that, during a portion of the time
6 period covered by the Complaint, Elpida USA sold DRAM to certain Original Equipment
7 Manufacturers (“OEMs”) in the United States. Except as so stated, Elpida Japan and Elpida USA
8 deny the allegations in Paragraph 38 of the Complaint to the extent they relate to Elpida Japan
9 and/or Elpida USA. Elpida Japan and Elpida USA lack knowledge or information sufficient to
10 form a belief as to the truth of the remaining allegations in Paragraph 38 of the Complaint, and on
11 that basis deny them.

12 39. Elpida Japan and Elpida USA admit that, during a portion of the time period
13 covered by the Complaint, Elpida USA sold DRAM to certain OEMs in the United States. Elpida
14 Japan and Elpida USA also admit that DRAM is sometimes sold as individual chips or as modules
15 containing more than one chip. Except as so stated, Elpida Japan and Elpida USA deny the
16 allegations in Paragraph 39 of the Complaint to the extent they relate to Elpida Japan and/or
17 Elpida USA. Elpida Japan and Elpida USA lack knowledge or information sufficient to form a
18 belief as to the truth of the remaining allegations in Paragraph 39 of the Complaint, and on that
19 basis deny them.

20 40. Elpida Japan and Elpida USA deny the allegations in Paragraph 40 of the
21 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
22 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
23 allegations in Paragraph 40 of the Complaint, and on that basis deny them.

24 41. Elpida Japan and Elpida USA deny the allegations in Paragraph 41 of the
25 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
26 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
27 allegations in Paragraph 41 of the Complaint, and on that basis deny them.

42. Elpida Japan and Elpida USA deny the allegations in Paragraph 42 of the Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 42 of the Complaint, and on that basis deny them.

The Alleged Conspiracy Purportedly Forms and Purportedly Increases Prices

43. Elpida Japan and Elpida USA deny the allegations in Paragraph 43 of the Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 43 of the Complaint, and on that basis deny them.

44. Elpida Japan and Elpida USA deny the allegations in Paragraph 44 of the Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 44 of the Complaint, and on that basis deny them. To the extent Paragraph 44 purports to quote from a document or testimony, Elpida Japan and Elpida USA refer Plaintiff to that text for its full and complete contents.

45. Elpida Japan and Elpida USA deny the allegations in Paragraph 45 of the Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 45 of the Complaint, and on that basis deny them. To the extent Paragraph 45 purports to quote from a document or testimony, Elpida Japan and Elpida USA refer Plaintiff to that text for its full and complete contents.

46. Elpida Japan and Elpida USA deny the allegations in Paragraph 46 of the Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 46 of the Complaint, and on that basis deny them.

47. Elpida Japan and Elpida USA deny the allegations in Paragraph 47 of the Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack knowledge or information sufficient to form a belief as to the truth of the remaining

1 allegations in Paragraph 47 of the Complaint, and on that basis deny them. To the extent
2 Paragraph 47 purports to quote from a document or testimony, Elpida Japan and Elpida USA refer
3 Plaintiff to that text for its full and complete contents.

4 48. Elpida Japan and Elpida USA deny the allegations in Paragraph 48 of the
5 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
6 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
7 allegations in Paragraph 48 of the Complaint, and on that basis deny them.

8 49. Elpida Japan and Elpida USA deny the allegations in Paragraph 49 of the
9 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
10 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
11 allegations in Paragraph 49 of the Complaint, and on that basis deny them. To the extent
12 Paragraph 49 purports to quote from a document or testimony, Elpida Japan and Elpida USA refer
13 Plaintiff to that text for its full and complete contents.

14 50. Elpida Japan and Elpida USA deny the allegations in Paragraph 50 of the
15 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
16 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
17 allegations in Paragraph 50 of the Complaint, and on that basis deny them. To the extent
18 Paragraph 50 purports to quote from a document, Elpida Japan and Elpida USA refer Plaintiff to
19 that document for its full and complete contents.

20 51. Elpida Japan and Elpida USA deny the allegations in Paragraph 51 of the
21 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
22 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
23 allegations in Paragraph 51 of the Complaint, and on that basis deny them. To the extent
24 Paragraph 51 purports to quote from a document, Elpida Japan and Elpida USA refer Plaintiff to
25 that document for its full and complete contents.

26 52. Elpida Japan and Elpida USA deny the allegations in Paragraph 52 of the
27 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
28 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining

1 allegations in Paragraph 52 of the Complaint, and on that basis deny them. To the extent
2 Paragraph 52 purports to quote from a document, Elpida Japan and Elpida USA refer Plaintiff to
3 that document for its full and complete contents.

4 53. Elpida Japan and Elpida USA deny the allegations in Paragraph 53 of the
5 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
6 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
7 allegations in Paragraph 53 of the Complaint, and on that basis deny them.

8 54. Elpida Japan and Elpida USA deny the allegations in Paragraph 54 of the
9 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
10 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
11 allegations in Paragraph 54 of the Complaint, and on that basis deny them.

12 55. Elpida Japan and Elpida USA deny the allegations in Paragraph 55 of the
13 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
14 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
15 allegations in Paragraph 55 of the Complaint, and on that basis deny them.

16 56. Elpida Japan and Elpida USA deny the allegations in Paragraph 56 of the
17 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
18 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
19 allegations in Paragraph 56 of the Complaint, and on that basis deny them.

20 57. Elpida Japan and Elpida USA deny the allegations in Paragraph 57 of the
21 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
22 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
23 allegations in Paragraph 57 of the Complaint, and on that basis deny them.

24 58. Elpida Japan and Elpida USA deny the allegations in Paragraph 58 of the
25 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
26 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
27 allegations in Paragraph 58 of the Complaint, and on that basis deny them.

1 59. Elpida Japan and Elpida USA deny the allegations in Paragraph 59 of the
2 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
3 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
4 allegations in Paragraph 59 of the Complaint, and on that basis deny them. To the extent
5 Paragraph 59 purports to quote from a document, Elpida Japan and Elpida USA refer Plaintiff to
6 that document for its full and complete contents.

7 60. Elpida Japan and Elpida USA deny the allegations in Paragraph 60 of the
8 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
9 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
10 allegations in Paragraph 60 of the Complaint, and on that basis deny them. To the extent
11 Paragraph 60 purports to quote from a document, Elpida Japan and Elpida USA refer Plaintiff to
12 that document for its full and complete contents.

13 61. Elpida Japan and Elpida USA deny the allegations in Paragraph 61 of the
14 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
15 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
16 allegations in Paragraph 61 of the Complaint, and on that basis deny them. To the extent
17 Paragraph 61 purports to quote from a document, Elpida Japan and Elpida USA refer Plaintiff to
18 that document for its full and complete contents.

19 62. Elpida Japan and Elpida USA deny the allegations in Paragraph 62 of the
20 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
21 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
22 allegations in Paragraph 62 of the Complaint, and on that basis deny them. To the extent
23 Paragraph 62 purports to quote from a document, Elpida Japan and Elpida USA refer Plaintiff to
24 that document for its full and complete contents.

25 63. Elpida Japan and Elpida USA deny the allegations in Paragraph 63 of the
26 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
27 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
28 allegations in Paragraph 63 of the Complaint, and on that basis deny them.

1 64. Elpida Japan and Elpida USA admit that Elpida Japan entered into a plea
2 agreement with the DOJ. Elpida Japan and Elpida USA refer Plaintiff to that plea agreement,
3 which was filed in federal court in the Northern District of California (Case No. CR 06-0059
4 (PJH)) in March 2006, for its full and complete contents. Elpida Japan and Elpida USA also admit
5 on information and belief that Samsung, Hynix, and Infineon have entered into plea agreements
6 with the DOJ. Elpida Japan and Elpida USA refer Plaintiff to those plea agreements for their full
7 and complete contents. Except as so stated, Elpida Japan and Elpida USA deny the allegations in
8 Paragraph 64 of the Complaint to the extent they relate to Elpida Japan and/or Elpida USA.
9 Elpida Japan and Elpida USA lack knowledge or information sufficient to form a belief as to the
10 truth of the remaining allegations in Paragraph 64 of the Complaint, and on that basis deny them.

11 65. Elpida Japan and Elpida USA admit on information and belief that Samsung
12 has entered into a plea agreement with the DOJ and refer Plaintiff to that plea agreement for its
13 full and complete contents. To the extent Paragraph 65 purports to quote from a transcript, Elpida
14 Japan and Elpida USA refer Plaintiff to that transcript for its full and complete contents. Except as
15 so stated, Elpida Japan and Elpida USA deny the allegations in Paragraph 65 of the Complaint to
16 the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack
17 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
18 Paragraph 65 of the Complaint, and on that basis deny them.

19 66. Elpida Japan and Elpida USA admit on information and belief that Hynix
20 has entered into a plea agreement with the DOJ and refer Plaintiff to that plea agreement for its
21 full and complete contents. To the extent Paragraph 66 purports to quote from a transcript, Elpida
22 Japan and Elpida USA refer Plaintiff to that transcript for its full and complete contents. Except as
23 so stated, Elpida Japan and Elpida USA deny the allegations in Paragraph 66 of the Complaint to
24 the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack
25 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
26 Paragraph 66 of the Complaint, and on that basis deny them.

27 67. Elpida Japan and Elpida USA admit on information and belief that Infineon
28 has entered into a plea agreement with the DOJ and refer Plaintiff to that plea agreement for its

1 full and complete contents. To the extent Paragraph 67 purports to quote from a transcript, Elpida
2 Japan and Elpida USA refer Plaintiff to that transcript for its full and complete contents. Except as
3 so stated, Elpida Japan and Elpida USA deny the allegations in Paragraph 67 of the Complaint to
4 the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack
5 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
6 Paragraph 67 of the Complaint, and on that basis deny them.

7 68. Elpida Japan and Elpida USA admit on information and belief that Micron
8 agreed to cooperate with the DOJ investigation. To the extent Paragraph 68 purports to quote
9 from a document, Elpida Japan and Elpida USA refer Plaintiff to that document for its full and
10 complete contents. Except as so stated, Elpida Japan and Elpida USA deny the allegations in
11 Paragraph 68 of the Complaint to the extent they relate to Elpida Japan and/or Elpida USA.
12 Elpida Japan and Elpida USA lack knowledge or information sufficient to form a belief as to the
13 truth of the remaining allegations in Paragraph 68 of the Complaint, and on that basis deny them.

14 **ALLEGATIONS CONCERNING PURPORTED FRAUDULENT CONCEALMENT AND**
15 **TOLLING**

16 69. Elpida Japan and Elpida USA deny the allegations in Paragraph 69 of the
17 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
18 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
19 allegations in Paragraph 69 of the Complaint, and on that basis deny them.

20 70. Elpida Japan and Elpida USA deny the allegations in Paragraph 70 of the
21 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
22 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
23 allegations in Paragraph 70 of the Complaint, and on that basis deny them.

24 71. The allegations in Paragraph 71 of the Complaint constitute legal
25 contentions and/or conclusions to which no response is required. To the extent a response is
26 required, Elpida Japan and Elpida USA deny the allegations in Paragraph 71 of the Complaint to
27 the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack
28

1 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
 2 Paragraph 71 of the Complaint, and on that basis deny them.

3 **ALLEGATIONS CONCERNING THE PURPORTED ASSIGNMENT OF DIRECT**
 4 **CLAIMS TO THE STATE**

5 72. Elpida Japan and Elpida USA lack knowledge or information sufficient to
 6 form a belief as to the truth of the allegations in Paragraph 72 of the Complaint, and on that basis
 7 deny them.

8 73. Elpida Japan and Elpida USA deny the allegations in the second sentence of
 9 Paragraph 73. Elpida Japan and Elpida USA lack knowledge or information sufficient to form a
 10 belief as to the truth of the remaining allegations in Paragraph 73 of the Complaint, and on that
 11 basis deny them.

12 74. Elpida Japan and Elpida USA lack knowledge or information sufficient to
 13 form a belief as to the truth of the allegations in Paragraph 74 of the Complaint, and on that basis
 14 deny them.

15 75. Elpida Japan and Elpida USA lack knowledge or information sufficient to
 16 form a belief as to the truth of the allegations in Paragraph 75 of the Complaint, and on that basis
 17 deny them. To the extent Paragraph 75 purports to quote from a document, Elpida Japan and
 18 Elpida USA refer Plaintiff to that document for its full and complete contents.

19 76. Elpida Japan and Elpida USA lack knowledge or information sufficient to
 20 form a belief as to the truth of the allegations in Paragraph 76 of the Complaint, and on that basis
 21 deny them.

22 77. Elpida Japan and Elpida USA lack knowledge or information sufficient to
 23 form a belief as to the truth of the allegations in Paragraph 77 of the Complaint, and on that basis
 24 deny them.

25 78. Elpida Japan and Elpida USA lack knowledge or information sufficient to
 26 form a belief as to the truth of the allegations in Paragraph 78 of the Complaint, and on that basis
 27 deny them.

79. Elpida Japan and Elpida USA lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 79 of the Complaint, and on that basis deny them.

80. The allegations in Paragraph 80 of the Complaint constitute legal contentions and/or conclusions to which no response is required. To the extent a response is required, Elpida Japan and Elpida USA deny the allegations in the first and third sentences of Paragraph 80. Elpida Japan and Elpida USA further deny the allegations in Paragraph 80 of the Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 80 of the Complaint, and on that basis deny them.

CLAIMS FOR RELIEF

First Claim (Alleged Violation of Section 1 of the Sherman Act)

81. Elpida Japan and Elpida USA deny the allegations in Paragraph 81 of the Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 81 of the Complaint, and on that basis deny them.

82. Elpida Japan and Elpida USA deny the allegations in Paragraph 82 of the Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 82 of the Complaint, and on that basis deny them.

83. Elpida Japan and Elpida USA deny the allegations in Paragraph 83, including all of its subparts, of the Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 83, including all of its subparts, of the Complaint, and on that basis deny them.

84. The allegations in Paragraph 84 of the Complaint constitute legal contentions and/or conclusions to which no response is required. To the extent a response is required, Elpida Japan and Elpida USA deny the allegations in Paragraph 84 of the Complaint to

1 the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack
2 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
3 Paragraph 84 of the Complaint, and on that basis deny them.

4 85. Elpida Japan and Elpida USA deny the allegations in Paragraph 85 of the
5 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
6 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
7 allegations in Paragraph 85 of the Complaint, and on that basis deny them.

8 86. The allegations in Paragraph 86 of the Complaint constitute legal
9 contentions and/or conclusions to which no response is required. To the extent a response is
10 required, Elpida Japan and Elpida USA deny the allegations in Paragraph 86 of the Complaint to
11 the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack
12 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
13 Paragraph 86 of the Complaint, and on that basis deny them.

14 ***Second Claim (Alleged Violation of the Donnelly Act, N.Y. Gen. Bus. L. § 340 et seq.)***

15 87. Elpida Japan and Elpida USA deny the allegations in Paragraph 87 of the
16 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
17 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
18 allegations in Paragraph 87 of the Complaint, and on that basis deny them.

19 88. Elpida Japan and Elpida USA deny the allegations in Paragraph 88 of the
20 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
21 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
22 allegations in Paragraph 88 of the Complaint, and on that basis deny them.

23 89. Elpida Japan and Elpida USA deny the allegations in Paragraph 89,
24 including all of its subparts, of the Complaint to the extent they relate to Elpida Japan and/or
25 Elpida USA. Elpida Japan and Elpida USA lack knowledge or information sufficient to form a
26 belief as to the truth of the remaining allegations in Paragraph 89, including all of its subparts, of
27 the Complaint, and on that basis deny them.

1 90. The allegations in Paragraph 90 of the Complaint constitute legal
 2 contentions and/or conclusions to which no response is required. To the extent a response is
 3 required, Elpida Japan and Elpida USA deny the allegations in Paragraph 90 of the Complaint to
 4 the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack
 5 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
 6 Paragraph 90 of the Complaint, and on that basis deny them.

7 91. Elpida Japan and Elpida USA deny the allegations in Paragraph 91 of the
 8 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
 9 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
 10 allegations in Paragraph 91 of the Complaint, and on that basis deny them.

11 92. The allegations in Paragraph 92 of the Complaint constitute legal
 12 contentions and/or conclusions to which no response is required. To the extent a response is
 13 required, Elpida Japan and Elpida USA deny the allegations in Paragraph 92 of the Complaint to
 14 the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack
 15 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
 16 Paragraph 92 of the Complaint, and on that basis deny them.

17 93. The allegations in Paragraph 93 of the Complaint constitute legal
 18 contentions and/or conclusions to which no response is required. To the extent a response is
 19 required, Elpida Japan and Elpida USA deny the allegations in Paragraph 93 of the Complaint to
 20 the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack
 21 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
 22 Paragraph 93 of the Complaint, and on that basis deny them.

23 ***Third Claim (Alleged Violation of Donnelly Act, N.Y. Gen. Bus. L. § 340 et seq.)***

24 94. Elpida Japan and Elpida USA deny the allegations in Paragraph 94 of the
 25 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
 26 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
 27 allegations in Paragraph 94 of the Complaint, and on that basis deny them.

1 95. Elpida Japan and Elpida USA deny the allegations in Paragraph 95 of the
2 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
3 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
4 allegations in Paragraph 95 of the Complaint, and on that basis deny them.

5 96. Elpida Japan and Elpida USA deny the allegations in Paragraph 96,
6 including all of its subparts, of the Complaint to the extent they relate to Elpida Japan and/or
7 Elpida USA. Elpida Japan and Elpida USA lack knowledge or information sufficient to form a
8 belief as to the truth of the remaining allegations in Paragraph 96, including all of its subparts, of
9 the Complaint, and on that basis deny them.

10 97. The allegations in Paragraph 97 of the Complaint constitute legal
11 contentions and/or conclusions to which no response is required. To the extent a response is
12 required, Elpida Japan and Elpida USA deny the allegations in Paragraph 97 of the Complaint to
13 the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack
14 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
15 Paragraph 97 of the Complaint, and on that basis deny them.

16 98. Elpida Japan and Elpida USA deny the allegations in Paragraph 98 of the
17 Complaint, including the footnote, to the extent they relate to Elpida Japan and/or Elpida USA.
18 Elpida Japan and Elpida USA lack knowledge or information sufficient to form a belief as to the
19 truth of the remaining allegations in Paragraph 98 of the Complaint, including the footnote, and on
20 that basis deny them.

21 99. The allegations in Paragraph 99 of the Complaint constitute legal
22 contentions and/or conclusions to which no response is required. To the extent a response is
23 required, Elpida Japan and Elpida USA deny the allegations in Paragraph 99 of the Complaint to
24 the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack
25 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
26 Paragraph 99 of the Complaint, and on that basis deny them.

27 100. The allegations in Paragraph 100 of the Complaint constitute legal
28 contentions and/or conclusions to which no response is required. To the extent a response is

1 required, Elpida Japan and Elpida USA deny the allegations in Paragraph 100 of the Complaint to
 2 the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack
 3 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
 4 Paragraph 100 of the Complaint, and on that basis deny them.

5 ***Fourth Claim (N.Y. Exec. L. § 62 (12))***

6 101. Elpida Japan and Elpida USA deny the allegations in Paragraph 101 of the
 7 Complaint to the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida
 8 USA lack knowledge or information sufficient to form a belief as to the truth of the remaining
 9 allegations in Paragraph 101 of the Complaint, and on that basis deny them.

10 102. The allegations in Paragraph 102 of the Complaint constitute legal
 11 contentions and/or conclusions to which no response is required. To the extent a response is
 12 required, Elpida Japan and Elpida USA deny the allegations in Paragraph 102 of the Complaint to
 13 the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack
 14 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
 15 Paragraph 102 of the Complaint, and on that basis deny them.

16 103. The allegations in Paragraph 103 of the Complaint constitute legal
 17 contentions and/or conclusions to which no response is required. To the extent a response is
 18 required, Elpida Japan and Elpida USA deny the allegations in Paragraph 103 of the Complaint to
 19 the extent they relate to Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA lack
 20 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
 21 Paragraph 103 of the Complaint, and on that basis deny them.

22 **RELIEF SOUGHT**

23 In answer to the Relief Sought, Elpida Japan and Elpida USA deny each and every
 24 allegation in the Relief Sought, including each and every subpart, to the extent they relate to
 25 Elpida Japan and/or Elpida USA. Elpida Japan and Elpida USA further specifically deny that
 26 Plaintiff and those who Plaintiff purports to represent are entitled to any of the relief described or
 27 to any remedy whatsoever against Elpida Japan or Elpida USA by virtue of the Complaint or
 28 under any theory.

1 All allegations of the Complaint not heretofore admitted or denied are here and
2 now denied as though specifically denied herein.

3 **DEFENSES**

4 Without assuming any burden that they would not otherwise bear, and reserving
5 their right to amend their Answer to assert additional defenses, Defendants Elpida Japan and
6 Elpida USA assert the following defenses in response to the Complaint:

7 **FIRST DEFENSE**

8 The Complaint fails to state claims or causes of action upon which relief may be
9 granted.

10 **SECOND DEFENSE**

11 Plaintiff's claims are barred because Plaintiff lacks standing to sue. Among the
12 reasons Plaintiff does not have standing are: (i) the alleged injury is not the type addressed by the
13 laws under which Plaintiff brings their claims; (ii) the alleged injury is indirect and too remote;
14 (iii) more direct victims of the alleged injury exist and are pursuing claims; (iv) the alleged
15 damages are speculative; and (v) Plaintiff's damage claims create an impermissible risk of
16 duplicate recoveries and complex damage apportionment.

17 **THIRD DEFENSE**

18 Plaintiff's claims are barred, in whole or in part, because Plaintiff lacks antitrust
19 standing under the principles articulated in *Associated General Contractors of California v.*
20 *California State Council of Carpenters*, 459 U.S. 519 (1983).

21 **FOURTH DEFENSE**

22 Plaintiff's claims are barred, in whole or in part, because indirect purchasers lack
23 standing to sue under the antitrust laws of the United States, *Illinois Brick Co. v. Illinois*, 434 U.S.
24 881 (1977), and/or applicable state laws.

25 **FIFTH DEFENSE**

26 Plaintiff's claims are barred, in whole or in part, because the Complaint does not
27 adequately define the relevant market or markets allegedly affected by the alleged conduct of
28 Elpida Japan and/or Elpida USA that is the subject of the Complaint.

SIXTH DEFENSE

Plaintiff's claims are barred, in whole or in part, because the Complaint fails both to allege fraudulent concealment with particularity and to plead the elements of fraudulent concealment required under the applicable law.

SEVENTH DEFENSE

Plaintiff's claims are barred, in whole or part, because the Complaint fails to plead conspiracy with the particularity required under the applicable law.

EIGHTH DEFENSE

Plaintiff's claims are barred, in whole or part, because the Complaint fails to plead fraud or misrepresentation with the particularity required under the applicable law.

NINTH DEFENSE

Plaintiff's claims are barred, in whole or in part, for failing to join indispensable parties.

TENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, because under any applicable law, Plaintiff has not suffered any cognizable antitrust injury, including but not limited to (a) "injury in fact" and (b) any injury proximately caused by any conduct of Elpida Japan and/or Elpida USA.

ELEVENTH DEFENSE

Insofar as Plaintiff has suffered any injuries, the fact and extent of which are expressly denied by Elpida Japan and Elpida USA, those injuries were not caused by any unlawful actions of Elpida Japan, Elpida USA, or any other Defendant.

TWELFTH DEFENSE

Plaintiff's claims are barred, in whole or in part, because any and all injuries and damages alleged in the Complaint, the fact and extent of which are expressly denied by Elpida Japan and Elpida USA, were or may have been directly and proximately caused by or contributed to by the statements, acts, and/or omissions of Plaintiff and/or third persons or entities and apart from Elpida Japan and/or Elpida USA.

THIRTEENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff has not suffered any cognizable damages.

FOURTEENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff has failed to mitigate its damages, the fact and extent of which are expressly denied by Elpida Japan and Elpida USA, and any recovery should be reduced or denied accordingly.

FIFTEENTH DEFENSE

Elpida Japan and Elpida USA aver, without admitting the existence of any contract, combination, or conspiracy in restraint of trade, that Elpida Japan and Elpida USA are entitled to set off any amounts paid to Plaintiff by any other Defendants or alleged co-conspirators who have settled, or do settle, Plaintiff's claims against them in this matter.

SIXTEENTH DEFENSE

To the extent that Elpida Japan and/or Elpida USA is found liable for damages, if any such damages there were or are, the fact and extent of which are expressly denied by Elpida Japan and Elpida USA, those damages must be reduced in proportion to Elpida Japan's and/or Elpida USA's degree of fault.

SEVENTEENTH DEFENSE

The relief sought by Plaintiff is barred, in whole or in part, because the alleged damages sought are too speculative and uncertain, and because of the impossibility of the ascertainment and allocation of such alleged damages.

EIGHTEENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, because an award of treble damages or of punitive damages or exemplary damages against Elpida Japan and/or Elpida USA based on the conduct alleged in the Complaint would violate the Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States.

NINETEENTH DEFENSE

To the extent there is a finding of an illegal overcharge, Plaintiff's claims are barred, in whole or in part, to the extent that such overcharge was absorbed, in whole or in part, by others, and was not passed through to the purchasers.

TWENTIETH DEFENSE

Plaintiff's claims are barred, in whole or in part, because any recovery or relief would unjustly enrich Plaintiff.

TWENTY-FIRST DEFENSE

Plaintiff's claims are barred, in whole or in part, because any alleged act or omission by or on behalf of Elpida Japan and/or Elpida USA alleged in the Complaint was undertaken in good faith, was justified, constituted *bona fide* business competition, had the purpose or effect of promoting, encouraging, or increasing competition, did not lessen competition in a relevant market, did not unreasonably restrain trade, was undertaken in pursuit of legitimate business and/or economic interests, and/or is privileged.

TWENTY-SECOND DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent they are based on alleged acts, conduct, or statements that are specifically permitted by law.

TWENTY-THIRD DEFENSE

Withdrawn.

TWENTY-FOURTH DEFENSE

Plaintiffs' alleged damages, if any, the fact and extent of which are expressly denied by Elpida Japan and Elpida USA, resulted from the acts or omissions of third parties over whom Elpida Japan and/or Elpida USA had no control. The acts of such third parties constitute intervening or superseding causes of the harm, if any, suffered by Plaintiff.

TWENTY-FIFTH DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent that any claimed injury or damages have been offset by benefits received with respect to the challenged conduct.

TWENTY-SIXTH DEFENSE

Elpida Japan and/or Elpida USA did not engage in any materially deceptive trade conduct with respect to Plaintiff.

TWENTY-SEVENTH DEFENSE

The claims of Plaintiff are barred, in whole or in part, because Plaintiff did not detrimentally rely on any alleged deceptive trade conduct by Elpida Japan and/or Elpida USA.

TWENTY-EIGHTH DEFENSE

Plaintiff's claims are barred, in whole or in part, because the alleged conduct of Elpida Japan and/or Elpida USA that is the subject of the Complaint either occurred outside of the jurisdiction of the Court or was neither directed to nor affected persons, entities or commerce in the United States or both.

TWENTY-NINTH DEFENSE

Plaintiff's out-of-state claims are barred or limited in whole or in part by the doctrines of *forum non conveniens* and improper venue. Plaintiff's claims, to the extent they rely on the laws of foreign states or are brought on behalf of out-of-state residents, would be better adjudicated in those foreign courts.

THIRTIETH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the equitable doctrines of laches.

THIRTY-FIRST DEFENSE

Plaintiff's claims for equitable relief are barred, in whole or in part, because Plaintiff has an adequate remedy at law.

THIRTY-SECOND DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff has failed to state a claim for injunctive relief insofar as it seeks to enjoin alleged events that have already transpired without the requisite showing of threatened future harm or continuing harm.

1 **THIRTY-THIRD DEFENSE**

2 As a matter of constitutional right and substantive due process, Elpida Japan and
3 Elpida USA are entitled to contest, by trial, their liability for damages to Plaintiff.

4 **THIRTY-FOURTH DEFENSE**

5 Plaintiff's claims are barred, in whole or in part, by the statute of limitations
6 including but not limited to N.Y. C.P.L.R. 214.

7 **THIRTY-FIFTH DEFENSE**

8 Plaintiff's claims are barred to the extent they would result in Elpida Japan and/or
9 Elpida USA paying damages to more than one claimant for the same alleged overcharge, because
10 such multiple recoveries would violate rights guaranteed to Elpida Japan and/or Elpida USA by
11 the United States Constitution, including, without limitation, rights guaranteed under the Due
12 Process Clause of the Fourteenth Amendment.

13 **THIRTY-SIXTH DEFENSE**

14 Plaintiff's claims are barred, in whole or in part, because the asserted statutes are
15 not applicable to the alleged conduct that occurred outside of New York or the United States or
16 that was not illegal where it occurred.

17 **THIRTY-SEVENTH DEFENSE**

18 Without admitting the existence of any contract, combination, or conspiracy in
19 restraint of trade, Elpida Japan and Elpida USA allege that the matters about which Plaintiff
20 complain resulted in increased output and lower prices for DRAM.

21 **THIRTY-EIGHTH DEFENSE**

22 Elpida Japan and Elpida USA alleges that each of Plaintiff's claims are barred
23 because the price for DRAM was fixed, if at all, by Plaintiff and/or other purchasers of DRAM,
24 either individually or collectively.

25 **THIRTY-NINTH DEFENSE**

26 Withdrawn.
27
28

FORTIETH DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent they seek damages that are duplicative of damages sought in other actions and would therefore violate the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution as well as the Due Process provisions of the California Constitution and that of other states.

FORTY-FIRST DEFENSE

Recovery of punitive or exemplary damages based on the conduct alleged in the Complaint and/or recovery of attorneys' fees is barred under various state laws.

FORTY-SECOND DEFENSE

Plaintiff's claims pursuant to the purported assignment clauses in the "Centralized Contract" are barred, in whole or in part, because Elpida Japan and Elpida USA have already resolved any such alleged claims with the direct purchaser OEMs and have been released from any further liability for any such claims, and recovery for such claims therefore would be duplicative and would violate the Excessive Fines and Due Processes Clauses of the United States Constitution.

FORTY-THIRD DEFENSE

Plaintiff lacks standing to prosecute their state consumer protection claims, in whole or in part, under, without limitation, N.Y. Gen. Bus. Law §§ 349, *et seq.*

FORTY-FOURTH DEFENSE

Plaintiff's claims under N.Y. Gen. Bus. Law § 349 are barred, in whole or in part, because any alleged conduct by Elpida Japan and/or Elpida USA is, or if in interstate commerce would be, subject to and complies with the rules and regulations of, and the statutes administered by, the Federal Trade Commission or other official department, division, commission or agency of the United States as such rules, regulations, or statutes are interpreted by the Federal Trade Commission or such department, division, commission or agency of the federal courts. *See* N.Y. Gen. Bus. Law § 349(d).

1 **FORTY-FIFTH DEFENSE**

2 Plaintiff's claims are barred, in whole or in part, to the extent such claims seek the
3 extraterritorial application of state law.

4 **FORTY-SIXTH DEFENSE**

5 Elpida Japan and Elpida USA hereby adopt and incorporate by reference any
6 additional defenses asserted by the other Defendants in this proceeding insofar as those defenses
7 may properly be asserted by Elpida Japan and/or Elpida USA.

8 **FORTY-SEVENTH DEFENSE**

9 Elpida Japan and Elpida USA reserve the right to assert any additional defenses as
10 this action proceeds and reserve the right to amend this answer in order to add any additional
11 defenses that may become necessary under the statutes or other applicable law and/or that may be
12 applicable to any claim asserted by Plaintiff.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Elpida Japan and Elpida USA pray as follows:

- 15 1. That Plaintiff takes nothing by reason of the Complaint, and that the action be
16 dismissed with prejudice;
- 17 2. That judgment be entered in favor of Elpida Japan and against Plaintiff with respect
18 to all causes of action in the Complaint;
- 19 3. That judgment be entered in favor of Elpida USA and against Plaintiff with respect
20 to all causes of action in the Complaint;
- 21 4. That the Court award Elpida Japan and Elpida USA their attorneys' fees and all
22 other costs reasonably incurred in the defense of this action; and
- 23 5. That the Court award such other relief that it deems just and proper.

24 Dated: February 4, 2009

SIMPSON THACHER & BARTLETT LLP

25
26 By: /s/
Harrison J. Frahn IV

27 *Counsel for Defendants*
28 ELPIDA MEMORY, INC. and
ELPIDA MEMORY (USA) INC.

DEMAND FOR JURY TRIAL

1
2 1. Pursuant to Federal Rule of Civil Procedure 38(b), Elpida Japan and Elpida USA
3 hereby demand a jury trial of all triable issues.

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5 Dated: February 4, 2009

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7 By: /s/
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